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## Special Education

### Administrative Advisory SPED 2019-1: Recovery High Schools and Students Eligible for Special Education

To: Administrators of Special Education and Other Interested Parties

From: Russell Johnston, Senior Associate Commissioner for District Support, and  
Cliff Chuang, Senior Associate Commissioner for Educational Options

Date: June 21, 2018

The purpose of this advisory is to address special education service delivery for students with Individualized Education Programs (IEPs) who are attending or planning to enroll in recovery high school (RHS) programs. This guidance augments the regulations related to RHS programs, [603 CMR 54.00](#), which were adopted by the Board of Elementary and Secondary Education in February 2017.

RHS programs provide a structured plan of recovery and a comprehensive 4-year high school education for students with a substance use disorder<sup>1</sup> or dependency. RHS programs are not autonomous schools or school districts. Additionally, they are not special education placements. They are non-special education public day programs operated by a school district or by a collaborative.<sup>2</sup> When a student attends an RHS program, the student's school district of residence will continue to claim that student for purposes of funding under G.L. c. 70. This funding scheme is similar to the school choice program under G.L. c. 71, §12B; charter schools under G.L. c. 71, §89; and placement of a student in an approved private day or residential program under G.L. c. 71B.

RHS programs were initially established in Massachusetts in 2006 through a grant program administered by the Department of Public Health. In 2009, the legislature enacted [G.L. c. 71, §91](#) to address some of the financial and data sharing issues that had arisen with these programs. Under G.L. c. 71, §91, RHS programs receive funds for enrolled students from the students' districts of residence (district). The amount transferred is "the state average foundation budget per pupil." **Id.** The relationship between students' districts of residence and the RHS program is important when determining how eligible students will receive special education and related services while enrolled in an RHS program.

As of April 2018, Massachusetts has five RHS programs, located in Beverly, Boston, Brockton, Springfield, and Worcester.<sup>3</sup> RHS programs serve, in total, approximately 150 students throughout the Commonwealth, some of whom have IEPs.

### Enrollment in RHS Programs in Relation to Special Education

Students and their families decide whether the student will enroll in an RHS program. Neither a school district nor an IEP Team has authority to propose a student's placement in an RHS program as part of the special education process because RHS programs are **not** special education placements. School districts may consult with students and families on decisions to enroll in RHS programs but should not dissuade enrollment in RHS programs based on access to special education services. Enrollment in an RHS program does not affect a student's eligibility for special education or otherwise suspend or waive a student's rights under the Individuals with Disabilities Education Act (IDEA) or state special education law.

The RHS regulations address special education at 603 CMR 54.04(4), as follows:

- (4) **Special Education:** Students with IEPs who also meet the definition of a Recovery High School Student in 603 CMR 54.02 are entitled to enroll in Recovery High Schools. The Recovery High School and the District of Residence shall collaborate to ensure special education services described in a student's IEP are provided in a manner that minimizes disruption of the student's recovery program. The District of Residence and the Recovery High School shall review the student's IEP as follows:
- a. The Recovery High School shall identify and implement accommodations, modifications, and other services described in the student's IEP to the extent permitted by existing resources. The Recovery High School shall identify and implement accommodations, modifications, and other services described in the student's IEP to the extent permitted by existing resources.
  - b. The District of Residence shall:
    - i. Not obstruct or discourage the enrollment or attendance of a student with an IEP in a Recovery High School.
    - ii. Arrange to provide special education services that the Recovery High School cannot provide with existing resources.
      1. The District of Residence may contract for the provision of services on a student's IEP by or through the Recovery High School and transfer the actual cost of such services to the Recovery High School, following the process in 603 CMR 10.07(3).
      2. Alternatively, the District of Residence may arrange for the provision of services on a student's IEP at a location other than the Recovery High School, provided such arrangements minimize disruption of the student's recovery program.
    - iii. Retain responsibility for a student with an IEP attending a Recovery High School as required by G.L. c. 71B, §5 and, as applicable, 603 CMR 28.10 *et seq.*

### Responsibility for Special Education Services

While each RHS program is expected to implement the accommodations, modifications, and other services described in a student's IEP to the extent permitted by the program's existing resources, programmatic responsibility for implementing a student's IEPs remains with the school district of residence. Financial responsibility for the excess costs of special education for students with IEPs is determined according to [603 CMR 28.10](#). In most cases, the district of residence is also the district financially responsible for the cost of the student's special education services. It is important that RHS programs and districts work collaboratively and cooperatively to provide students with access to all special education and related services described in their IEPs. Students' special education services should be provided in a manner that minimizes disruption of their recovery program.

### Delivery of Special Education Services to Students Enrolled in RHS Programs

Upon notification that a student with an IEP has enrolled in an RHS program, the district with programmatic responsibility for the student's special education program must convene the IEP Team. The district should invite RHS program staff to participate in the Team meeting, and RHS program staff are encouraged to attend and participate, either in person or by teleconference.

The Team should review the student's IEP and, as necessary, update it to reflect implementation of special education and related services while the student is in the RHS program. The IEP Team should consider whether to modify the type, frequency, or manner in which special education services are provided while the student is attending the RHS program, to account for differences in education service delivery at the RHS program as well as the student's individual needs and the recovery process.

As part of its IEP review, the Team should identify and discuss the accommodations, modifications, and services on the student's existing IEP that the RHS program is able to provide. The Team should also discuss what special education, services, and accommodations the RHS program cannot provide. The Department of Elementary and Secondary Education encourages the district of residence, whenever possible, to arrange for the RHS program to provide necessary special education services on-site for a fee paid by the district to the RHS program. The district may also provide special education

services to the student through other means, such as arranging with other providers to serve the student on-site at the RHS program or contracting with the district where the RHS program is located to serve the student on-site at the RHS program. Alternatively, depending on factors such as the student's needs, the proximity of the RHS program to the district of residence, and the importance of minimizing disruption of the student's recovery program, the district may recommend that the student return to the district of residence for part or all of a school day periodically in order to receive special education services.

The Team should update the student's IEP to reflect any substantive changes the Team agrees to with regard to the delivery of special education services while the student is attending the RHS. Because a student's enrollment in an RHS program is not a change in placement, the Team should not amend the placement page on the updated IEP. All updates to the IEP resulting from the Team meeting following the student's decision to enroll in an RHS program should be documented in writing by the district on an updated IEP. The updated IEP must be signed by the student's parent, or by the student if the student is age 18 or older, to document consent.

Questions regarding transportation of RHS students for whom transportation is a related service on their IEP should be resolved on a case-by-case basis.<sup>4</sup> School districts may wish to consult their legal counsel on these matters.

If you have questions or suggestions, or require additional information, please contact the Office of Student and Family Support [✉achievement@doe.mass.edu](mailto:achievement@doe.mass.edu) / (781) 338-3010, or the Problem Resolution System at [✉compliance@doe.mass.edu](mailto:compliance@doe.mass.edu) / (781) 338-3700.

**Note:**

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<sup>1</sup> Substance use disorder is not itself a disability under the Individuals with Disabilities Education Act or G.L. c. 71B.

<sup>2</sup> While school districts and collaboratives may enter into contracts with vendors to run these programs, the district or collaborative remains responsible for program oversight and these programs are considered public programs.

<sup>3</sup> For more information about these programs, see [BESE February 2017 Regular Meeting Item #7: Regulations on Recovery High Schools, 603 CMR 54.00](#) and [MASS Recovery High Schools website](#).

<sup>4</sup> The Bureau of Special Education Appeals has issued at least one decision addressing transportation for students enrolled in an RHS program. See [In Re: Student v. Billerica Public Schools, BSEA # 1403000](#).

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